

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|--|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Aiyanna Milligan | Team: Squad #6 | CCRB Case #: 201707918 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 09/20/2017 3:00 AM | Location of Incident: Park Avenue between E 167th Street and E 168th Street | Precinct: 42 | 18 Mo. SOL 3/20/2019 | EO SOL 3/20/2019 | |
| Date/Time CV Reported Wed, 09/20/2017 3:14 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 09/25/2017 12:59 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. POF Merita Hoxha | 11713 | 955988 | 042 PCT |
| 2. POF Chris Aybar | 15039 | 955736 | 042 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.POF Chris Aybar | Abuse: Police Officer Chris Aybar questioned § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On September 20, 2017, § 87(2)(b) filed this complaint with IAB via telephone, generating log number 17-36436. On that same day, § 87(2)(b) was arrested by Det. Carlos Lozada of the 42nd Precinct Detective Squad due to a threat made, while filing his complaint, against a member of service. The complaint was received at the CCRB on September 25, 2017, via log number 2017-36772.

On September 20, 2017, at approximately 3:00 AM, on Park Avenue between East 167th and East 168th Streets in the Bronx, PO Chris Aybar and PO Merita Hoxha pulled up alongside § 87(2)(b) in their unmarked patrol car as he walked home. PO Aybar questioned § 87(2)(b) about a nearby, desolate vehicle and the officers resumed patrol (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was neither summonsed nor arrested at the conclusion of this encounter.

Video footage was obtained, however it does not depict any portion of the incident.

Findings and Recommendations

Allegation A - Abuse of Authority: Police Officer Chris Aybar questioned § 87(2)(b)

It is undisputed that PO Aybar questioned § 87(2)(b) who provided a statement on November 21, 2017, testified that as he returned home from the store, he opened a pack of cigarettes and began making a phone call. § 87(2)(b) disengaged the call and continued walking. A gray, Ford Fusion drove past § 87(2)(b) and pulled over behind an abandoned vehicle. § 87(2)(b) described the vehicle as a black, Lincoln Town Car with an open trunk and no rear license plate. § 87(2)(b) held a lit cigarette in his right hand and his cellphone and a shopping bag in his left hand as he continued to walk. The RMP remained in park, in a well-lit portion of the street, and as § 87(2)(b) passed it a bright flashlight was shone in his face. PO Aybar allegedly asked § 87(2)(b) at least twice, what he had in his hand. § 87(2)(b) answered the first time, however PO Aybar repeated the question, so he released his cigarette. PO Aybar then asked § 87(2)(b) whether the abandoned vehicle belonged to him. § 87(2)(b) replied that he did not know who the vehicle belonged to and he had nothing to do with it. The RMP then drove away (BR 01).

PO Aybar provided testimony on December 7, 2017. PO Aybar and PO Hoxha were assigned to Anti-Crime in the 42nd Precinct. As PO Hoxha drove, PO Aybar observed what appeared to be a vehicle that was broken into. PO Hoxha came to a stop less than a car length behind the vehicle in a poorly lit area of the block. PO Aybar described the vehicle as having an open trunk, open doors, and possibly slashed tires. PO Hoxha observed § 87(2)(b) who was the only civilian in the vicinity at the time, standing at an unknown distance from the vehicle, either behind or parallel to it. PO Aybar rolled down her window, shone her flashlight at § 87(2)(b) and asked him what was going on as she gestured with her hand towards the vehicle. § 87(2)(b) replied that he was on his phone and displayed it to PO Aybar. PO Hoxha and PO Aybar then resumed patrol. PO Aybar initiated the encounter with § 87(2)(b) during which he was free to leave, because he was the only individual in the vicinity and her intention was to look into vehicle and learn whether it was § 87(2)(b)'s vehicle or what he was doing next to it (BR 02).

PO Hoxha provided testimony on December 5, 2017 that was consistent with PO Aybar's account of the incident (BR 03).

On the incident date, PO Hoxha and PO Aybar were interviewed by Det. Rene Canela at approximately 6:30 AM, at which time they provided an account of the incident that was similar to their CCRB interviews (BR 04).

NYPD Patrol Guide Procedure 212-11 defines an investigative encounter as a police interaction with a civilian for a law enforcement or investigative purpose. The reason for a request for information, or Level 1 encounter, is to gather information and not to focus on an individual as a potential suspect. At this level, an individual is free to leave (BR 05). An officer can approach someone to request information when there is an objective, credible reason. The justification/reason for the approach, which should be sufficient and articulable, does not necessarily have to be indicative of criminality. People v. DeBour, 49 A.D.2d 1038 (BR 06).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB Complaint filed by § 87(2)(b) (BR 11).
- PO Aybar has been a member of the NYPD for three years and has had seven other allegations pleaded against her in four other cases (BR 12). § 87(2)(g)

- In CCRB Case 201507102, the Board substantiated and recommended Command Discipline for a retaliatory summons allegation. The NYPD disposition was ultimately Formalized Training.
- PO Hoxha has been a member of the NYPD for three years and has had three other allegations pleaded against her in one other case (BR 13). § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) was the only complainant/victim in this case. Due to § 87(2)(b)'s arrest, this complaint was not suitable for mediation.
- § 87(2)(b)
- A FOIL request for any Notice of Claim filed by § 87(2)(b) was submitted on December 6, 2017 and will be added to the case file upon its return.

Squad No.: **6**

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date